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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,938	08/27/2001	Kirsten Lambertsen	102964-2	4041
21125	7590	07/20/2004	EXAMINER	
NUTTER MCCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604			FOULADI SEMNANI, FARANAK	
		ART UNIT		PAPER NUMBER
		2674		03

DATE MAILED: 07/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/939,938	LAMBERTSEN, KIRSTEN	
	Examiner	Art Unit	
	Faranak Fouladi	2672	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 18 March 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-13 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-13 is/are rejected.
 7) Claim(s) 1,6 and 8 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 27 August 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

1. This action is responsive to communications: application, filed on 08/27/01; amendment A, filed on 09/21/03; Amendment B, filed on 01/20/04; RCE and Amendment C, filed on 03/18/04.
2. Claims 1-13 are pending in the case, with claims 1 and 6 being independent.
3. The present title of the application is "Virtual makeover system and method" (as originally filed).

Claim Rejections - 35 USC § 112

4. **The following is a quotation of the first paragraph of 35 U.S.C. 112:**

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The subject matter "Positioning a plurality of templates on the facial image" was not described in the specification. The specification on page 11 lines 4-17 describes "altering" or "outlining" features' default shapes that are already provided. Altering or outlining a shape is not the same as positioning a shape on the facial image.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 1 recites the limitations "particular product" in line 8; "the image" in line 10; "the particular product" in line 11. There is insufficient antecedent basis for these limitations in the claim.
8. The phrases "particular product" and "the particular product" are inconsistent with "beauty product" used earlier in the claim.
9. Claim 2 recites the limitation "the applied product" in line 1. There is insufficient antecedent basis for this limitation in the claim.
10. Claim 4 recites the limitation "the specified particular products" in line 1. There is insufficient antecedent basis for this limitation in the claim.
11. Claim 5 recites the limitations " the specified particular products " in line 1 and "the items" in line 2. There is insufficient antecedent basis for these limitations in the claim.
12. Claim 6 recites the limitations "a digital photographic image" in line 1 which is inconsistent with the phrase "a digital photographic image" used in the preamble, and "each movable shape" in line 5, "the shape" in line 6, "the movable shape" in line 7, "the point" in line 9, "the outlined features" in line 11, "the photographic image" in line 12 and in line 13. There is insufficient antecedent basis for these limitations in the claim.
13. Claim 7 recites the limitation "specific beauty products" in line 3, "the outlined features" in line 4 and in line 5, "the photographic image" in line 4 and in line 6 and in

line 9, "beauty products" in line 5 and in line 7, and "the one or more products" in line 8. There is insufficient antecedent basis for this limitation in the claim.

14. Claim 8 recites the limitation "the photographic image" in line 2. There is insufficient antecedent basis for this limitation in the claim.

15. Claim 9 recites the limitation "the photographic image" in line 2. There is insufficient antecedent basis for this limitation in the claim.

16. Claim 10 recites the limitations "the group" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Objections

17. Claims 1, 6 and 8 are objected to because of the following informalities:

- (a) In claim 1 line 6 "to outline features" should be changed to "to outline each feature".
- (b) In claim 6 line 11 "shaped" is grammatically wrong and should be changed to "shape".
- (c) In claim 8 line 2 "adjust" should be changed to "to adjust".

Appropriate correction is required.

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,293,284 B1 to Rigg and further in view of Japanese Patent JP02000011144A to Goto.

20. As per independent claim 1, "a makeover method, such method comprising the steps of: configuring a computer to receive a facial image (applicant admitted prior art, specification page 3 lines 12-15; applicant has stated "One of ordinary skill in the art will readily appreciate that several different methods and systems exist for uploading and viewing images, and that all known methods and systems can be used with the present invention.");

providing a catalog of beauty products (Rigg disclose in col. 3 lines 6-10);
enabling the user to specify particular products to apply to the outlined features (Rigg disclose in col. 3 lines 6-10); and
modifying the image to form a made over facial image having the particular products applied to the outlined features, thereby enabling the user to visualize an intended makeover (Rigg disclose in col. 3 lines 4-10).

Rigg does not explicitly disclose “positioning a plurality of templates on the facial image, each template having a shape that substantially corresponds to a feature on the facial image; enabling a user to adjust the shape of each template to outline features on the facial image;”.

Goto disclose in abstract (English translation) a system provided with plural eyebrow templates for deforming and displaying eyebrow in a facial image. Goto further disclose in the abstract and in drawing # 5 correcting the eyebrow templates to outline the eyebrow on the facial image.

It would have been obvious at the time of invention to one skilled in the art to combine the Virtual makeover method of Rigg with the Eyebrow deformation system of Goto to help the user to locate different areas on the facial image and as a result applying the virtual makeover faster and easier.

21. As per dependent claim 2, “the method of claim 1, wherein the modified facial image shows the applied products in true color.” Rigg disclose in col. 3 line 24-3.
22. As per dependent claim 3, “the method of claim 1, wherein the facial image is an image of the user.” Rigg disclose in col. 2 line 49-51.
23. As per dependent claim 4, “the method of claim 1, further comprising the step of storing the specified particular products as a palette for application to other or later images.” Rigg disclose in col. 3 line 6-16.
24. As per dependent claim 5, “the method of claim 1, further comprising the step of storing the specified particular products in a shopping cart, and enabling the user to

purchase the items in the shopping cart." Rigg disclose in col. 3 line 17-22.

Claim Rejections - 35 USC § 102

25. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

26. Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent JP02000011144A to Goto.

27. As per independent claim 6, "a method for outlining features in a digital photographic image, comprising: receiving a digital photographic image from a user; providing a plurality of movable shapes for outlining features in the digital photographic image (Goto disclose the templates in abstract), each movable shape comprising a plurality of lines connected by a plurality of points which together form the shape (Goto disclose in drawing # 5); enabling the user to select a point on the movable shape; enabling the user to move each selected point to outline a specific feature in the digital photographic image and thereby moving each line connected to the point moved by the user so as to form a new shape (Goto disclose selecting and correcting the templates and in drawing #5); displaying each new shaped formed by the user in connection with the outlined features in the photographic image (Goto disclose deforming and displaying eyebrows); enabling the user to save each new shape in connection with the photographic image." Goto disclose in abstract

(English translation) and also in drawing # 5.

Claim Rejections - 35 USC § 103

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

29. Claim 7 –13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goto as applied to claim 6 above, and further in view of Rigg US 6,293,284 B1 as applied to claim 1 above.

30. As per dependent claim 7, “the method of claim 6, further comprising: providing a product database of beauty products available for purchase, each beauty product being computer manipulable by the user such that specific beauty products can be applied to and displayed in connection with the outlined features of the photograph image; enabling the user to access the product database to apply beauty products to the outlined features of the photographic image; and enabling the user to select from the product database one or more beauty products available for purchase and to apply an image representative of the one or more products available for purchase in the photographic image.”

Goto disclose all the limitations set forth in claim 6 but Goto is silent about the rest of limitations set forth in claim 7. Riggs on the other hand disclose a product

database of beauty products that are computer manipulable by the user in connection with the outlined features of the photographic image; and he also disclose a barcode symbol or an image for designating the product with the customer. It would have been obvious to an ordinary person skilled in the art at the time of invention to combine the Rigg's program with the Goto's system to define the size and shape of the facial parts and to enable the user to apply the virtual makeover to those facial parts in order to let the user to view and evaluate various makeover on their face from the comfort of their own computer or terminal.

31. As per dependent claim 8, "the method of claim 7, further comprising: enabling the user adjust the application of the beauty product to the photographic image." Rigg disclose in col. 3 line 4.
32. As per dependent 9, "the method of claim 8, wherein the step of enabling the user to adjust the application of the beauty product to the photographic image comprises: enabling the user to select a desired width or opacity of the applied beauty product." Rigg disclose in col. 1 lines 55-60 and col. 2 line 45-49. Rigg 's program does this by locating color-requiring area and electronically painted over the image.
33. As per dependent claim 10, "the method of claim 7, wherein the beauty products are selected from the group consisting of wigs, glasses, contacts, eye shadow, blush, eye liner, lipstick, lip liner, foundation, eye brow color, eye lashes, hair color, and combinations thereof." Rigg disclose in col. 3 lines 6-8.

34. As per dependent claim 11, "the method of claim 7, further comprising: enabling the user to search for a specific beauty product in the product database." Rigg disclose in abstract lines 10-14.

35. As per dependent claim 12, "the method of claim 7, further comprising: enabling the user to save the selected beauty products as a palette." Rigg disclose in abstract lines 12-14.

36. As per dependent 13, "the method of claim 12, further comprising: enabling the user to communicate the palette to other users." Rigg disclose in col. 3 lines 17-22.

Response to Arguments

37. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

38. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

39. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faranak Fouladi whose telephone number is 703-305-3223. The examiner can normally be reached on Mon-Fri from 8:00-4:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Razavi can be reach at 703-305-4713.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Application/Control Number: 09/939,938
Art Unit: 2672

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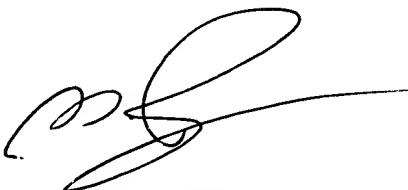
Washington, DC. 20231

Or faxed to: 703-872-9306 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,
Arlington, VA, sixth-floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or
proceeding should be directed to the Technology Center 2600 Customer Service
Office whose telephone number is 703-306-0377.

Faranak Fouladi
Patent Examiner
Art Unit 2672



MR
MICHAEL RAZAVI
SUPERVISORY PATENT EXAMINER
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